

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF:

9 GLOBAL TRUSTS, L.L.C.
10 8584 South Masthead
11 Tucson, Arizona 85706

12 CLYDE F. WAGNON and MARTHA E.
13 WAGNON, husband and wife,
14 8584 South Masthead
15 Tucson, Arizona 85706

16 JERI WOODS and JOHN DOE WOODS, wife and
17 husband
18 8584 South Masthead
19 Tucson, Arizona 85706

DOCKET NO. S-03508A-02-0000

DECISION NO. ____66765____

OPINION AND ORDER

20 DATE OF HEARING:

21 PLACE OF HEARING:

Phoenix, Arizona

22 ADMINISTRATIVE LAW JUDGE:

Philip J. Dion III

23 APPEARANCES:

Kathleen Coughenour DeLaRosa, Staff Attorney,
on behalf of the Securities Division of the
Arizona Corporation Commission.

24 **BY THE COMMISSION:**

25 On December 5, 2002, the Securities Division (“Division”) of the Arizona Corporation
26 Commission (“Commission”) filed a Notice of Opportunity for Hearing Regarding Proposed Order to
27 Cease and Desist, for Restitution, for Administrative Penalties, and for Other Affirmative Action
28 (“Notice”) against Respondents Global Trusts, L.L.C. (“Global”), and Clyde F. Wagon (“Wagon”) and Martha E. Wagon (“Mrs. Wagon”), husband and wife (hereinafter collectively referred to as “Respondents”). On February 24, 2004, the Notice was served on Respondents by certified mail.

The Notice afforded Respondents the opportunity to request a hearing with the Commission within ten days from the date of service and to answer the Notice within thirty days from the date of

1 service. Respondents did not request a hearing or file an answer to the Notice.

2 On May 27, 2003, the Division filed with the Commission an Affidavit of Default and
3 Application for Entry of Default ("Default Application") requesting the entry of default against
4 Respondents.

5 In response to the Default Application, Respondents provided notice to the Division that
6 Respondents had filed a Chapter 13 proceeding in bankruptcy. Respondents made no other response or
7 appearance.

8 On June 11, 2003, the Division filed a Motion for Entry of Default with respect to these
9 Respondents. Respondents did not respond to that motion, and the Hearing Officer granted the
10 Division's motion by Procedural Order dated July 18, 2003.

11 On August 22, 2003, the Division appeared before a regular open meeting of the Commission
12 regarding securities matters to present a proposed Default Order to Cease and Desist, for Restitution, for
13 Administrative Penalties, and for Other Affirmative Action Re: Respondents Global Trusts, L.L.C.,
14 Clyde Wagon and Martha E. Wagon ("Default Order"). Mr. and Mrs. Wagon personally appeared at
15 the Open Meeting. They admitted the factual allegations of the Notice regarding the sale of investment
16 contracts with respect to pay telephones on behalf of Alpha Telcom, Inc. ("Alpha"). They avowed,
17 however, that they could not determine whether or not the financial relief requested by the Division
18 accurately reflected the amounts paid to them in connection with those sales. As a result, the
19 Commission ordered the parties to try to reach a settlement regarding restitution and fine amount. The
20 Commission further ordered that, if the parties could not reach an agreement, a hearing should be set to
21 resolve the issue of restitution and penalties.

22 Subsequently, the Division provided a proposed Consent Order to Respondents. The Division
23 did not receive any response from Respondents regarding the proposed Consent Order. As a result, on
24 October 1, 2003, the Division filed a motion requesting that a hearing be set regarding restitution and
25 penalties. The Hearing Division set a hearing by Procedural Order dated October 20, 2003.

26 Pursuant to that Procedural Order, the hearing convened on November 18, 2003, at 1:30 p.m. at
27 the Commission's offices at 1200 West Washington Street in Phoenix, Arizona. Respondents did not
28 appear. The Administrative Law Judge delayed the proceedings for 30 minutes to provide additional

1 time for the Respondents to appear. During that time, the Hearing Division attempted unsuccessfully to
2 reach Respondents to determine whether they intended to appear. After the Respondents failed to
3 appear, the proceeding convened and evidence was presented.

4 * * * * *

5 Having considered the entire record herein and being fully advised in the premises, the
6 Commission finds, concludes, and orders that:

7 **FINDINGS OF FACT**

8 1. Respondent GLOBAL is an Arizona limited liability company, organized on or about
9 December 28, 1998, and doing business in Pima County, Arizona. Global is not registered in Arizona
10 as a securities dealer or as an investment advisor.

11 2. Respondent Wagon at all times material hereto was a resident of Arizona. At all
12 times material hereto, Wagon was licensed to sell insurance in the state of Arizona, but was not
13 registered as a securities salesperson or an investment advisor representative in Arizona.

14 3. At all times material hereto, Wagon was married to Mrs. Wagon. All acts done by
15 Wagon were done in furtherance of and for the benefit of the marital community of Wagon and
16 Mrs. Wagon. Mrs. Wagon therefore was joined in this action, pursuant to A.R.S. § 44-2031(C), to
17 determine the liability of the marital community for Wagon's violations.

18 4. At all times material hereto, Alpha Telcom, Inc. ("Alpha") was an Oregon corporation
19 located at 2751 Highland Avenue, Grants Pass, Oregon 97526.

20 5. At all times material hereto, American Telecommunications Company, Inc. ("ATC")
21 was a Nevada corporation formed as a wholly owned subsidiary of Alpha on or about September 17,
22 1998. Originally named ATC, Inc., the name was changed to American Telecommunications
23 Company, Inc., sometime in the first half of 2000. Its address was the same as Alpha's, but was later
24 changed to 620 S.W. 4th Street, Grants Pass, Oregon 97526, then to 2900 Vine Street, Suite J, Grants
25 Pass, Oregon 97526, and then to 942 S.W. 6th Street, Suite G, Grants Pass, Oregon 97526.

26 6. At all times material hereto, Paul S. Rubera ("Rubera") was the president and control
27 person of Alpha, and the control person of ATC.

1 7. ATC was organized by Rubera and operated in conjunction with and as an alter ego of
2 Alpha. The two companies were controlled by Rubera and his associates.

3 8. At all times material hereto, Alpha and ATC, and their affiliates, sold pay telephones
4 with telephone service agreements pursuant to which the investor would share in the profits of the
5 pay telephone. Investors would enter into two agreements, a purchase agreement, and a service
6 agreement with Alpha to manage the phone. The two agreements were presented and promoted
7 simultaneously. The telephones were presented to potential investors with four options in the way of
8 service contracts, each varying in the amount of service provided. The four options varied from
9 Level 1, which included a minimum of service, to Level 4, which provided full service to the
10 purchaser, including choosing a site and installing the telephone, collecting all revenue from the
11 telephone's operation, repairing the telephone when necessary, and even repurchasing or buying back
12 the telephone at the investor's option. Under Level 4, Alpha would split the net proceeds with the
13 investor on a 70/30 basis, with Alpha retaining 70% and the investor receiving 30%. The price of the
14 pay telephones was the same regardless of the service option chosen, \$5,000.00 per telephone.
15 Although investors were given a choice of using a company other than Alpha to manage the phone,
16 no known Arizona investor picked a company other than Alpha to manage their phones. A "typical
17 return" on each pay telephone was touted as 14% per year. In practice, all purchasers received
18 \$58.34 per month per pay telephone purchased, which amounted to exactly 14% per annum.

19 9. ATC's primary role was marketing the contracts. Alpha's main focus was on
20 obtaining phone sites and installing, servicing, and managing the phones.

21 10. ATC was presented to the public as the sales organization for Alpha. In early 1999,
22 ATC engaged Strategic Partnership Alliance, L.L.C., a Nevada limited liability company, and/or SPA
23 Marketing, L.L.C., a Nevada limited liability corporation, (collectively "SPA") as its independent
24 marketing and sales firm(s). SPA thereafter was responsible for hiring, training, and supervising
25 sales agents who were selling the telephone contracts. After SPA came on board, ATC remained as
26 the processing center for the contracts, while Alpha continued to perform the service and
27 maintenance of the phones.

28 11. Respondents, directly or indirectly, entered into agreements with Alpha, ATC, and/or

1 SPA, pursuant to which Respondents sold investment contracts involving Alpha pay telephones (the
2 “Alpha investment contracts”) within or from the state of Arizona. All Alpha investment contracts
3 Respondents sold were Level 4 contracts.

4 12. Respondents told prospective investors their investments were insured. The insurer
5 named varied. Mentioned most often was the Northern and Western Insurance Company of Grand
6 Turk, Turks and Caicos Islands, British West Indies (“N&W”). Also mentioned were Lloyd’s of
7 London and four other insurance companies listed as re-insurers. N&W was a captive insurance
8 company wholly owned by Rubera, the President and control person of Alpha, and Robert S.
9 Harrison of Richmond, Texas. N&W is not authorized to write insurance in Arizona. N&W was not
10 authorized to write insurance in any state in which the Alpha pay telephones were located. In a letter
11 dated August 15, 2001, Harrison stated: “There is not now, nor was there ever any insurance
12 coverage for Alpha Telcom, Inc.”

13 13. Respondents presented Alpha to prospective customers as a stable, profitable, and
14 innovative company that had been in business since 1985. Alpha was said to be selling and providing
15 a “turn-key” operation.

16 14. Respondents were paid commissions for each telephone sold.

17 15. Respondents sold Alpha investment contracts involving 117 telephones to nine
18 individuals or entities within or from the state of Arizona from November 17, 1999 through March 9,
19 2001, for a total sales amount of \$585,000. Respondents received commissions from those sales as
20 follows:

- 21 a) Global received commissions of \$69,100.00 during the year 2000 and
22 \$31,080.00 during 2001, for a total amount of \$100,180.00; and
23 b) Respondent Jeri Woods,¹ an agent of Global, received commissions during the
24 year 2001 in the total amount of \$10,500.00.

25 16. Alpha has a long regulatory history in which state securities regulators have found that
26 these purchases of pay telephones and accompanying service contracts were unregistered securities in
27

28 ¹ Jeri Woods is the daughter of the Respondents.

the form of investment contracts that were sold by unregistered persons and/or entities, and ordered Alpha and those working with it to cease and desist. Respondents did not reveal these orders to the majority of the investors with whom they dealt. The orders that Respondents could have revealed include:

- a. February 2, 1999, Cease and Desist Order issued by Pennsylvania Securities Commission, *In the Matter of Alpha Telcom, Inc., et al.*, No. 9812-06.
- b. November 17, 1999, Cease and Desist Order issued by North Carolina Secretary of State, *In the Matter of the North Carolina Securities Division v. ATC, Inc., Paul Rubera, et al.*, No. 99-038-CC.
- c. June 30, 1999, Temporary Order of Prohibition issued by Illinois Secretary of State, *In the Matter of Alpha Telcom, Inc.*, No. 9900201.
- d. January 14, 2000, Consent Order of Prohibition issued by Illinois Secretary of State, *In the Matter of Alpha Telcom, Inc.*, No. 9900201, in which Alpha agreed to offer rescission to all Illinois purchasers.
- e. November 24, 1999, Cease and Desist Order issued by Wisconsin Department of Financial Institutions, *In the Matter of Alpha Telcom, Inc. and Paul S. Rubera, et al.*, No. S-99225(EX).
- f. March 7, 2000, Temporary Cease and Desist Order issued by Rhode Island Department of Business Regulation, *In the Matter of Alpha Telcom, Inc. and ATC, Inc.*
- g. July 18, 2000, Florida Department of Banking and Finance filed administrative action against Alpha and others, seeking a Cease and Desist Order.
- h. October 24, 2000, Desist and Refrain Order issued by California Department of Corporations.

17. Actions that have proceeded against Alpha after the Respondents stopped selling Alpha investment contracts include:

- a. July 26, 2001, Cease and Desist Order issued by Ohio Commissioner of Securities.
- b. August 27, 2001, Temporary Restraining Order issued by United States District Court, District of Oregon, *SEC v. Alpha Telcom, Inc., et al.*, No. CV 01-1283 PA.
- c. September 5, 2001, Cease and Desist Order issued by Arkansas Securities Department, *In the Matter of Alpha Telcom, Inc., et al.*, No. 01-36-S.

- d. September 6, 2001, Preliminary Injunction issued by United States District Court, District of Oregon, *SEC v. Alpha Telecom, Inc., et al.*, No. CV 01-1283 PA.
- e. February 7, 2002, Final Judgment of Permanent Injunction issued by United States District Court, District of Oregon, *SEC v. Alpha Telecom, Inc., et al.*, No. CV 01-1283 PA.
- f. March 13, 2002, Final Order to Cease and Desist issued by Washington Department of Financial Institutions in *In the Matter of Alpha Telecom, Inc., et al.*, No. SDO-21-02.

The SEC's Complaint in the United States District Court, District of Oregon, alleged that Alpha and its affiliates engaged in a Ponzi-like scheme that never generated enough income to pay expenses, and that the money paid to existing investors always came from sales to new investors. Several days before the Temporary Restraining Order was issued on August 27, 2001, Alpha sought bankruptcy protection in Florida pursuant to chapter 11 of the Bankruptcy Code. A court-appointed receiver subsequently took over the remaining operations of Alpha. Alpha consented on October 19, 2001 to entry of the Final Judgment of Permanent Injunction against it, but did not admit the allegations of the Complaint. On February 7, 2002, the United States District Court for the District of Oregon filed its final opinion in connection with the trial of Rubera. In that opinion, the court verified that the Alpha investment contracts are securities subject to regulation, and that Alpha operated a Ponzi-type scheme in connection with sales of the Alpha investment contracts.

18. Alpha's monthly payments to investors ceased prior to August, 2001.

19. At the hearing, the Division recommended that the Respondents should pay an administrative penalty of \$15,000.

20. In this matter, the Respondents did not request a hearing, nor did they object to the alleged violations of the Act made in the Division's Default Order. In fact, the Respondents appeared at an Open Meeting and admitted they violated the Act. Therefore, we are adopting the Division's Default Order and its proposed findings of fact as set forth herein regarding the Respondents' violations of the Act.

21. We find that, pursuant to the evidence presented at the hearing, the Respondents should pay restitution in the amount of \$110,680 and an administrative penalty of \$15,000.

CONCLUSIONS OF LAW

1
2 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona
3 Constitution and the Securities Act.

4 2. Global and Wagnon offered or sold securities in the form of investment contracts in
5 Alpha, within or from Arizona within the definition[s] of A.R.S. §§ 44-1801(21) and (26).

6 3. Global and Wagnon violated A.R.S. § 44-1841 by offering or selling securities in
7 Arizona that were neither registered, nor exempt from such registration.

8 4. Global and Wagnon violated A.R.S. § 44-1842 by offering or selling securities within or
9 from Arizona while neither registered as dealers or salespersons nor exempt from such registration.

10 5. Global and Wagnon violated A.R.S. § 44-1991 by directly or indirectly: (i) employing a
11 device, scheme or artifice to defraud; (ii) making untrue statements of material fact or omitted to state
12 material facts which were necessary in order to make the statements made not misleading in light of the
13 circumstances under which they were made; or (iii) engaging in transactions, practices or courses of
14 business that operated or would operate as a fraud or deceit upon offerees and investors. The conduct of
15 Global and Wagnon includes at least the following:

- 16 a) Global and Wagnon failed to advise purchasers of the state regulatory actions against
17 Alpha and of the potential consequences of those orders with respect to their investment;
18 b) Global and Wagnon represented to purchasers that their investment and/or the pay
19 telephones they purchased from Alpha were fully insured, when they were not, in fact,
20 insured by any insurance company authorized to provide insurance in Arizona or in any
21 state in which the pay telephones were located; and
22 c) Global and Wagnon represented to purchasers that monies they would receive as a result
23 of their investment in Alpha were derived from profits on pay telephones, when in fact
24 the returns paid to investors came from purchases by subsequent investors.

25 6. Pursuant to A.R.S. § 44-2032, restitution in the amount of \$110,680 should be paid by
26 Respondents.

27 7. Pursuant to A.R.S. § 44-2036, a fine of \$15,000 is appropriate.
28

ORDER

IT IS THEREFORE ORDERED that pursuant to A.R.S. § 44-2032, Respondents and their agents, servants, employees, successor and assigns, and those persons in active concert or participation with them shall cease and desist from the actions described hereinabove in violation of A.R.S. §§ 44-1841, 44-1842 and 44-1991.

IT IS FURTHER ORDERED that, pursuant to A.R.S. §44-2032 and A.A.C. R14-4-308, Respondents shall make restitution in the total amount of \$110,680.00 to all investors shown on the records of the Commission by disgorging all commissions received by Respondents as a result of the sale of Alpha investment contracts.²

IT IS FURTHER ORDERED that restitution ordered hereinabove shall bear interest at the legal rate from the date of the individual investments until paid in full.

IT IS FURTHER ORDERED that restitution shall be made payable to the "State of Arizona" to be deposited into an interest-bearing account, if appropriate, until distribution is made.

IT IS FURTHER ORDERED that, pursuant to A.R.S. § 44-2036, Respondents shall pay an administrative penalty of \$15,000, payable to the State Treasurer, within sixty (60) days from the effective date of this Order for deposit into the general fund of the state of Arizona.

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² In the event that an Order is issued against Jeri Woods for violations of the Act, the Respondents shall be jointly and severally liable for that portion of the \$110,680 attributable to her actions.

IT IS FURTHER ORDERED that the administrative penalty prescribed above shall accrue interest at the legal rate from the effective date of this Order until paid in full.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN	COMMISSIONER	COMMISSIONER
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COMMISSIONER	COMMISSIONER	
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IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2004.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

PJD:mj

1 SERVICE LIST FOR: GLOBAL TRUSTS, et al.

2 DOCKET NO.: S-03508A-02-0000

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